

Remarks

Claims 1 - 12 were rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement, such rejection being based on the lack of support for the limitation with respect to the barrier disc [spanning] the "entirety of the width of the rim of the container". This language has been replaced by language with respect to spanning "the entirety of the opening defined by the rim of the container," and this language is clearly supported by the showing in Fig. 3 of the drawing. Accordingly, reconsideration and withdrawal of the rejection of claims 1 - 12 under 35 U.S.C. §112, first paragraph, are respectfully requested.

Claims 1, 4 – 6 and 9 – 12 were rejected under 35 U.S.C. §103(a) as being unpatentable over Druitt (U.S. 5,638,972) in view of Baranowski et al. (U.S. 6,677,397) and Dudzik (GB 2,235,186). This rejection is respectfully traversed.

To begin with, Baranowski et al. specifically teaches that its barrier disc (28) is "adhered" to the inner surface of the closure. This construction, then, does not meet the limitations of claims 1 and 6 that the barrier disc is "inserted" in the closure and is retained within the closure assembly "solely by a folded back free end of the sealing fin when the sealing fin is in engagement with the rim of the container." The requirement for the use of an "adhesive" in the construction of Baranowski et al. introduces material compatibility problems into the manufacture of such closure, and may well preclude the use of certain barrier materials in combination with the

materials used to manufacture the closure itself.

It is also respectfully submitted that claims 1, 4 – 6 and 9 – 12 define patentably under 35 U.S.C. §103(a) for the reason that Baranowski et al. is not prior art as to the subject matter of such claims in view of the enclosed Declaration Under 37 CFR §1.131 of Wendall D. Willingham, one of the joint inventors of the invention of this application. This Declaration meets the requirements of §1.131 in that it establishes (i) conception of the invention prior to the August 14, 2000 effective date of the Baranowski et al. reference and (ii) either the reduction to practice of the invention of this application prior to the effective date of the Baranowski et al. reference or due diligence from prior to such date to a subsequent reduction to practice of the invention. Thus, without the availability of the Baranowski et al. reference as prior art as to the rejected claims, such claims must be allowed over the only other prior art references cited against them, namely Druitt and Dudzik, for the reason that Baranowski et al. was found to be necessary to supply a missing link in the combination of prior art teachings that were found to be necessary to support a rejection of such claims.

Accordingly, for either or both of the foregoing reasons, it is respectfully submitted that claims 1, 4 – 6 and 9 – 12 define patentably under 35 U.S.C. §103(a) over any proper combination of the teachings of Druitt and Dudzik, with or without the use of any teachings from the Baranowski et al. reference, and reconsideration

and allowance of each of such claims are respectfully requested.

Claims 2, 3, 7 and 8 were rejected under 35 U.S.C. §103(a) as being unpatentable over Druitt (U.S. 5,638,972) in view of Dudzik (GB 2,235,186) "as applied to claims 1 and 6 above," and further in view of Product Data Sheet of Darafoam Exp. 5162-65EG. This rejection is respectfully traversed.

To begin with, it is believed that the statement of the rejection of claims 2, 3, 7 and 8 requires reliance on Baranowski et al. to support such rejection in that Baranowski et al. was used to support the rejection of "claims 1 and 6 above," in that the rejection of claims 1 and 6 relied on teachings from Baranowski et al. in support of such rejection. In any case, it is respectfully submitted that claims 2, 3, 7 and 8 are patentable under 35 U.S.C. §103(a) with claims 1 and 6, their respective parent claims, for the reasons set forth above in support of the patentability of claims 1 and 6. It is also respectfully submitted that the incorporation of the teachings from a fourth (or third) reference, namely, Product Data Sheet, with the teachings of Druitt and Dudzik, with or without Baranowski et al., is a rejection of such complexity that it is in the nature of a "hindsight" rejection that is impermissible under *In re Fritch*, 972 F.2d 126, 23 USPQ2d 1780, 1784 (Fed.Cir. 1992).

Accordingly, for one or both of the foregoing reasons, it is respectfully submitted that claims 2, 3, 7 and 8 are patentable under 35 U.S.C. §103(a) over Druitt, Dudzik and Product Data Sheet, with or without Baranowski et al., and

reconsideration and allowance of such claims are respectfully requested.

Claims 2 and 7 were rejected under 35 U.S.C. §103(a) as being unpatentable over Druitt (U.S. 5,638,972) in view of Dudzik (GB 2,235,186) as applied to claims 1 and 6 above, and further in view of Richmond (U.S. 6,095,359). This rejection is respectfully traversed.

To begin with, it is respectfully submitted that this rejection, like the rejection of claims 2, 3, 7 and 8 in paragraph 5 of the Office Action, failed to omit the Baranowski et al. reference in the statement of rejection as being "applied to claims 1 and 6 above" and that, if the Baranowski reference was relied upon, such rejection would be in applicable for the reasons set forth above in support of the patentability of claims 1 and 6.

It is also respectfully submitted that the rejection of claims 2 and 7 under 35 U.S.C. §103(a), with or without reliance on the teachings of Baranowski et al., is a rejection of such complexity that it is a "hindsight" rejection that is impermissible under In re Fritch.

Accordingly, it is respectfully submitted that claims 2 and 7 are patentable under 35 U.S.C. §103(a) over Druitt in view of Dudzik and further in view of Richmond, with or without reliance on Baranowski et al., for one or both of the reasons set forth above, and reconsideration and allowance of each such claim is respectfully requested.

Claims 2 and 7 were rejected under 35 U.S.C. §103(a) as being unpatentable over Druitt (U.S. 5,638,972) in view of Dudzik (GB 2,235,186) as applied to claims 1 and 6 above, and further in view of Richmond (U.S. 6,095,359). This rejection is respectfully traversed.

To begin with, it is respectfully submitted that the statement of the rejection of claims 2 and 7 as being unpatentable over Druitt in view of Dudzik is deficient in that it fails to rely on Baranowski et al., which was the rejection that was set forth above "as applied to claims 1 and 6," and, on this basis, it is respectfully submitted that claims 2 and 7 are patentable with their respective parent claims, claims 1 and 6, for the reasons set forth above in support of the patentability of claims 1 and 6.

It is also respectfully submitted that the rejection of claims 2 and 7, relying, as it does, on a tortuous reconstruction of 3 or 4 prior art references, is a "hindsight" rejection that is impermissible under In re Fritch.

Accordingly, it is respectfully submitted that claims 2 and 7 define patentably under 35 U.S.C. §103(a) over any proper combination of the teachings of Druitt, Dudzik and Richmond, with or without Baranowski, for either or both of the reasons set forth above and reconsideration and allowance of such claims are respectfully requested.

Claims 3 and 8 were rejected under 35 U.S.C. §103(a) as being unpatentable over Druitt (US 5,638,972) in view of Dudzik (GB 2,235,186) and Richmond (U.S.

6,095,359) as applied to claims 2 and 7 above, and further in view of Yamada et al. (U.S. 5,143,763). This rejection is respectfully traversed.

To begin with, it is respectfully submitted that claims 3 and 8 are patentable under 35 U.S.C. §103(a) with claims 2 and 7, their respective parent claims, for the reasons set forth above in support of the patentability of claims 2 and 7.

It is also respectfully submitted that the even more tortuous 5 (or 4) reference reconstruction of the prior art was found necessary to support the rejection of claims 3 and 8, is a "hindsight" rejection that is impermissible under In re Fritch.

Accordingly, it is respectfully submitted that claims 3 and 8 define patentably under 35 U.S.C. §103(a) over the combination of prior art teachings that was found necessary to support their rejection for either or both of the foregoing reasons, and reconsideration and allowance of such claims is respectfully requested.

In addition to the amendment to claims 1 and 6 that are being mirror made to overcome the rejection under 35 U.S.C. §112, first paragraph, amendments of an editorial character are also being made to such claims. These further amendments are deemed to be proper and unobjectionable; no new matter is being added.

It is respectfully submitted that Applicants have responded in a fully satisfactory manner to all matters at issue in this application, and this application is

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now in condition for allowance. Reconsideration and allowance of this application at an early date, are, therefore, respectfully requested.

Respectfully submitted,

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